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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re K.F.-1 et al., Persons Coming Under
the Juvenile Court Law.

ALAMEDA COUNTY SOCIAL
SERVICES AGENCY,

Plaintiff and Respondent,

v.

G.F.,

Defendant and Appellant.

A137717

(Alameda County
Super. Ct. Nos. OJ11018011 &
OJ11018012)

INTRODUCTION

G.F. (Mother), herself a dependent child, is the mother of twins K.F.-1 and K.F.-2. She appeals from an order terminating her parental rights, contending the dependency court abused its discretion in denying her request for a continuance of the Welfare and Institutions Code section 366.26 hearing.¹ We conclude there was no abuse of discretion, and affirm.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

PROCEDURAL AND FACTUAL BACKGROUND

We previously set forth the background of this case in our opinion in case No. A136673, and quote from that opinion.²

“At the time of the infant girls’ birth in November 2011, Mother was 15 years of age, and herself a dependent of the juvenile court, placed in a foster home in Stanislaus County. The Stanislaus County social services agency took the minors³ into protective custody a few days later, due to Mother’s history of running from her foster placement and engaging in prostitution, and a concern that Mother intended to run away with the minors. Mother did in fact run away from her placement five days after the minors were removed from her custody.

“The Department filed a dependency petition as to the minors on November 28, 2011. The petitions sought dependency jurisdiction under section 300, subdivisions (b) and (g), alleging, as ultimately amended, that: (b-1) Mother was a dependent of the juvenile court, had an ongoing pattern of running away, and a history of sexual exploitation; (b-1) Mother had refused [to] provide any information to hospital staff regarding the identity of the father; and, (g-1) the father’s whereabouts and ability to provide care were unknown.

“The juvenile court ordered formal detention of the minors on November 29, following a hearing at which Mother appeared through counsel.

“The Department’s jurisdictional/dispositional report, completed on December 9, 2011, indicated Mother’s whereabouts were unknown since her going AWOL from her foster placement on November 27. Mother had been a ‘chronic runaway,’ according to the social worker (SW) who was currently assigned to Mother’s (not the minors’) dependency proceeding. This SW had attempted to locate Mother through various

² On our own motion, we take judicial notice of our opinion in case No. A131878. (See Evid. Code § 451, subd. (a).)

³ For the sake of clarity, any reference hereafter to ‘minor’ or ‘minors’ refers to the infant girls and not to Mother.

telephone numbers, including that of Mother's 'pimp.' The report recommended Mother be offered reunification services should she 'resurface' from being AWOL.

"An addendum report, completed on January 5, 2012, reported Mother was no longer AWOL, having returned to her foster care placement on December 6. The minors were placed 'relatively close' to Mother's own foster placement, and it appears Mother had at least one visit with them on December 16, and possibly more afterwards, before she cancelled a visit scheduled for December 28.

"At the conclusion of a contested jurisdictional/dispositional hearing, held January 9, 2011, the juvenile court sustained the amended jurisdictional allegations summarized above, adjudged the minors dependents of the court, and adopted the Department's dispositional recommendations. The reunification case plan adopted by the court required Mother to complete a psychological evaluation, and follow any recommended treatment, including individual therapy, and to participate in a parenting class to learn the developmental stages of her daughters.⁴ The court's visitation order directed that Mother have visitation with the minors 'as frequently as possible consistent with [their] . . . well-being.'

"From a subsequent ex parte application filed by Mother's counsel on May 15, 2012, it appears Mother had again run away from her foster placement in late December 2011,⁵ and her whereabouts had been unknown until January 25, 2012, when she was detained in Los Angeles on a misdemeanor charge of soliciting an act of prostitution. (Pen. Code, § 647, subd. (b).) Mother was afterwards transported to the Alameda County Juvenile Justice Center (JJC), and after a delinquency dispositional hearing on March 8,

⁴ The 'service objectives' of the case plan additionally called for Mother to show her ability and willingness to have custody of the minors, cooperate with [the] assigned SW and care provider, comply with medical or psychological treatment, in order to resolve her problems and achieve reunification, comply with court orders, express anger appropriately and refrain from acting negatively on her impulses, and maintain her relationship with her children by following the conditions of the visitation plan.

⁵ Thus Mother had appeared only through her counsel at the jurisdictional/dispositional hearing on January 9.

was adjudged a ward of the juvenile court under section 602, and placed in the custody of the county's Juvenile Probation Office (JPO).⁶ Mother's counsel reported she was still detained at the JJC as of May 15, and had neither visited with her children nor received the psychological evaluation required by her case plan. Her counsel thus sought, and the juvenile court granted on May 15, an order directing the Department and the JPO to cooperate and provide Mother with appropriate space for supervised visitation—as frequently as possible consistent with the minors' best interests—and directing both agencies to take the steps necessary to complete Mother's psychological evaluation.

“Four days later, Mother's counsel filed section 388 petitions seeking a modification of orders directing the Department to offer reunification services better suited to Mother's current placement in the JJC, and her anticipated transfer and placement in an out-of-state facility.

“Not long afterward, on May 24, 2012, the Department completed its report for the six-month status review hearing, in which it recommended the termination of Mother's services and the setting of a section 366.26 hearing to select permanent plans for the minors. The assigned SW reported Mother remained in custody at the JJC and was expecting to be transferred to an out-of-state placement. The SW further stated she had been assigned to Mother's case on January 12, shortly after the jurisdictional/dispositional hearing, and, as Mother was AWOL from her foster placement at that time, the SW had been unable to contact her. The SW first learned on February 10 that Mother had been arrested in Los Angeles two weeks earlier, and first learned on March 1 that Mother was in custody at the JJC. On March 9, the SW learned Mother had been adjudged a ward of the delinquency court, and on March 15 she contacted Mother's JPO officer, at which time she requested approval to visit Mother at the JJC, and also inquired about possible visitation. The probation officer told the SW ‘visitation was not an option’ as it ‘was not safe for the infants at [the JJC].’ The next day, March 16, the SW contacted a new JPO officer regarding visitation, and the officer

⁶ At this point, the juvenile court's jurisdiction over Mother changed from dependency jurisdiction under section 300 to delinquency jurisdiction under section 602.

said she would ‘follow up’ on the inquiry, noting that any such visitation at the JJC would be regarded as a ‘special visit.’ The SW’s initial visit with Mother took place at the JJC on March 19. The SW contacted the JPO officer again on March 27 and March 30, asking again about available services and visitation, and provided the JPO officer with information about Mother’s reunification case plan. On May 16, the SW provided the JPO officer with a copy of the ex parte order that Mother’s dependency counsel had obtained on May 15, which directed the JPO to cooperate with the SW in arranging visitation.

“Concerning Mother’s case plan requirements to complete a psychological evaluation and parenting education, the SW reported she had learned, on March 27, 2012, that there was a waiting list of several months to obtain a psychological evaluation through the West Coast Children’s Clinic—the provider to which the Department had initially intended to make its referral at the time of the jurisdictional/dispositional hearing. On that date the SW requested that the JPO officer set up the evaluation through the JJC’s Guidance Clinic. After learning, on April 3, that parenting classes were not available at the JJC, the SW, two days later, contacted Mother’s individual therapist and requested that she include parenting education in her therapy sessions, at least during the time Mother was at the JJC and unable to access classes. At this time, the therapist reported she was having difficulty obtaining the necessary approval from the JPO to visit Mother at the JJC in order to provide weekly therapy. On that same day the SW contacted the JPO officer to address the issue of the therapist’s regular visits, and to request again that Mother be placed on the list for a psychological evaluation through the Guidance Clinic. The SW repeated the latter request on April 18, and on April 27 the JPO officer said she would make the request on May 4, at Mother’s next delinquency hearing. On May 16, the SW provided the JPO officer with a copy of the ex parte order, which, as noted above, had been obtained by Mother’s dependency counsel one day earlier, and which ordered the JPO to cooperate with the SW in arranging a psychological evaluation for Mother.

“An addendum report, completed July 18, stated the SW had continued efforts to arrange with the JPO for Mother to have visitation with the children at the JJC. After attempting to schedule visits on May 22 and May 29, the SW was able to confirm a scheduled visit for June 6. On May 31 the SW learned that the juvenile court—at a hearing held in Mother’s delinquency case—had ordered a visit to occur at the JJC no later than June 5. The SW facilitated and supervised a visit on that date. While waiting for this visit to begin, the SW learned from the JPO officer that Mother was scheduled to be placed out-of-state on June 12. The SW was able, with the assistance of Mother’s appointed counsel in both her delinquency proceeding and the minors’ dependency proceedings, to arrange a second visit on June 11.

“The following day Mother was transferred to the Mingus Mountain Academy (the Academy) in Arizona—a facility designed for emotionally and behaviorally at-risk teenage girls. In the addendum report, the SW noted a later conversation she had with Mother’s case manager at the Academy, from whom she learned Mother was taking school classes, and was also engaged in individual therapy, group therapy, and anger management, and was soon to begin a parenting class. The SW asked the case manager to arrange a psychological evaluation for Mother as well. The case manager reported that the average stay for girls placed at the Academy was nine to 12 months.

“A combined hearing on Mother’s section 388 petitions and the six-month status review commenced July 27, 2012, at which time the juvenile court admitted the above-mentioned reports and heard testimony from the SW. The court continued the hearing after directing the SW to coordinate with the case manager at the Academy, to determine if safe arrangements for Mother’s visitation with the minors could be arranged at that facility, with instructions to report back to the court.

“In its report filed August 10, 2012, the SW recommended that court deny Mother’s request for out-of-state visitation. She explained Mother’s case manager at the Academy had reported the facility could supervise visits but could not provide parenting support; the Academy could also assist in local accommodations and transportation for the foster parents and the minors. Mother’s therapist at the Academy stated she could

observe such visitation if it were ordered. But the foster parents said they would need one month's advance notice of visitation, if ordered, due to the logistical and work-related difficulties the foster father faced in scheduling such travel. Also, the JPO had not offered to support visitation, and its plan was eventually to return Mother to the care of her father, who had been denied approval for relative placement. The SW additionally noted the extent of travel would be taxing on the minors due to their young age. Their current developmental stage (almost 10 months of age) made it difficult for them to handle any change in their daily routine, and visitation would be difficult for the same reason, given their lack of any significant relationship with Mother since their birth, a lack attributable to Mother's AWOLs from the dependency placements that preceded her delinquency placements. The SW finally pointed to the fact she was recommending termination of Mother's services, because she did not feel she could successfully reunify with the minors if given additional reunification services. Mother's counsel in the minors' dependency proceeding interposed a forceful opposition to the SW's recommendation.

“In a second addendum report, signed September 14, 2012, the SW noted subsequent reports from the Academy stated Mother's behaviors ‘were becoming more negative,’ she had required ‘redirection for inappropriate conversation regarding prostitution, not taking responsibility for her behavior, and minimizing her negative behaviors.’ Also, given the JPO plan to return Mother to her father's care after her discharge from the Academy, family therapy between the two was an important component, yet her father had not participated in such therapy nor responded to the contacts Mother had attempted by telephone.

“At the conclusion of the combined hearing, on September 18, 2012, the juvenile court terminated Mother's reunification services and set the matter for a hearing under section 366.26. The court also granted a motion by Mother's counsel to withdraw her section 388 petitions.” (*G.F. v. Superior Court* (Jan. 10, 2013, A136673) [nonpub. opn.].) We denied Mother's writ petition seeking vacation of the September 18, 2012,

order on the merits on January 10, 2013. (§ 366.26, subd. (l); *G.F. v. Superior Court*, *supra*, A136673.)

At the section 366.26 hearing on January 10, 2013, Mother's counsel first sought a "brief" continuance of the hearing because he had just received the opinion in case No. A136673 denying the writ petition, and was "consider[ing] possibly petitioning the [California] Supreme Court for review." The court denied that request. Mother's counsel then sought a six-month continuance to "readdress what is the most appropriate plan [¶] . . . [¶] . . . reassess the situation, after we understand what this young mother is capable of" The court did not grant that continuance, and ordered Mother's parental rights terminated.

DISCUSSION

Mother's sole claim on appeal is the court abused its discretion in denying her motion for continuance of the section 366.26 hearing.

Section 352, governing continuances in dependency cases, provides in part: "Upon request of counsel for the parent, guardian, or minor, or petitioner, the court may continue any hearing under this chapter beyond the time limit within which the hearing is otherwise required to be held, provided that no continuance shall be granted that is contrary to the interest of the minor. In considering the minor's interests, the court shall give substantial weight to a minor's need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements. [¶] Continuances shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the evidence presented at the hearing on the motion for the continuance. Neither a stipulation between counsel nor the convenience of the parties is in and of itself a good cause. Further neither a pending criminal prosecution nor family law matter shall be considered in and of itself as good cause. Whenever any continuance is granted, the facts proven which require the continuance shall be entered upon the minutes of the court. [¶] In order to obtain a motion for a continuance of the hearing, written notice shall be filed at least two court days prior to the date set for hearing, together with affidavits or

declarations detailing specific facts showing that a continuance is necessary, unless the court for good cause entertains an oral motion for continuance. . . .” (§ 352.)

Here, Mother did not comply with the statutory requirements for requesting a continuance. Moreover, even had she done so, she did not demonstrate the good cause required. While there may be some cases “which may necessitate additional time so that the changing relationship between the minor and his or her parents can be examined,” (*In re Sean E.* (1992) 3 Cal.App.4th 1594, 1599), this is not one of them. The relationship between Mother and the minors was not changing. Mother had had little contact with the minors due to her history of running away from her own foster home placements and her placement at an out-of-state facility after being arrested for prostitution in Los Angeles.

Mother’s attorney sought the six-month continuance “in order for Mother to prove that she could, in fact, provide stable housing for the girls and prove that she was no longer a flight risk.” There was no evidence Mother, a minor dependent child herself, would be able to show she could provide stable housing for the minors and would not run away during the six-month proposed continuance period. She was not scheduled to be released from her out-of-state placement until March 1, 2013, almost two months after the hearing, at which time she would be released to her father’s custody. Moreover, even if in six months Mother could provide housing and not run away, that alone would not be sufficient to demonstrate termination of parental rights would be detrimental to the minors. (See § 366.26, subd. (c)(1)(B).)

The court did not abuse its discretion in denying the motion for continuance.

DISPOSITION

The order is affirmed.

Banke, J.

We concur:

Margulies, Acting P. J.

Sepulveda, J.*

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Four, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.